

TTPO Legal Status Options
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Annette - You asked that we research whether the Tribal Transportation Planning Organization (TTPO) would qualify for 501(c)(3) status and what it would take to apply for that designation.

The TTPO was established in December 2003 by Washington Tribes, the Washington State Department of Transportation (WASHDOT), and the Bureau of Indian Affairs (BIA), as a work group to discuss tribal transportation planning issues. The group has met quarterly since that time, but remained a loosely affiliated group that was funded by small contributions from WASHDOT and individual tribes. In 2010, the group decided to form a Washington Non-Profit Corporation and to more actively promote fundraising efforts. The TTPO registered as a non-profit corporation with the Washington Secretary of State on January 21, 2010. The TTPO submitted form articles of incorporation and adopted bylaws. The TTPO's enumerated purposes include:

- To promote tribal transportation planning in Washington State and to foster intergovernmental cooperation and coordination;
- To provide a forum for the advancement of professional skills and knowledge among transportation professionals employed by Indian governments; and
- To encourage effective use of planning principles, cooperation and education among transportation agencies at the tribal, local, regional, state and federal levels.

Structure issues

The initial consideration may be whether or not the organization wants to remain a Washington corporation. Currently, it appears that the active members of the group are all federally recognized tribes. The tribes are sovereigns protected from suit, however, the TTPO as a Washington corporation will be subject to suit under Washington law. The tribes should weigh whether the benefits of the corporate structure outweigh the potential downside of being subject to state law and private suit. Liability in a suit would likely be limited to the assets of the corporation; however, in very remote circumstances members can sometimes be held liable for the actions of their corporate entities. The corporate structure does provide benefits such as certainty for donors and may make it easier for the group to manage assets and have a separate bank account. In Washington, one of the largest tribal trade groups, the Washington Indian Gaming Association ("WIGA"), is a Washington State Non-Profit Corporation, and that structure has been a successful model for the group. WIGA collects dues from its member tribes and is an active information and lobbying platform for tribal gaming issues.

Another formation option would be to remain an associated group of individual tribes that relies on members contributing small grants for the TTPO meetings and any training activities. An example of a very active inter-tribal group that is not formed under state law is the Columbia River Intertribal Fish Commission (CRITFC). CRITFC is governed by a board and has adopted bylaws that allow each tribe one vote for any decision, and decisions must be unanimous.

Finally, the TTPO could form an entity under tribal law. However, since this is an inter-tribal group, other members may be sensitive to being subject to another tribe's law and court. If the TTPO would like more information about these options, let us know.

Tax issues

The second consideration is tax implications of the corporation. Washington non-profit corporations do not automatically qualify for tax exempt status under federal IRS laws. A non-

profit corporation will still need to apply for tax exempt status under one of the tax exemptions. There are a number of different types of exemptions in section 501(c) of the revenue code--the most familiar is **501(c)(3)**. It appears from the governing documents and stated purpose of the TTPO that it would likely qualify for 501(c)(3) status, but we would want to do some research to confirm this before applying for the exemption. It will be important for the TTPO to obtain tax exempt status because without a federal exemption, the revenue could be taxable. Generally, the revenue of tribal governments is exempt from federal income tax but the tribes supporting TTPO will certainly not want tax-exempt funds to then be subject to federal or state tax after funds are given to the TTPO.

The process for federal tax exempt status does take some time--and money. The federal filing fee is \$1,000. The filing fee of \$1000 is an estimate of the Federal application fee for all applicants (it can run from \$400-\$850 depending on gross receipts of the business, but fees may be changing this year). Normally, we would estimate obtaining tax-exempt status would cost approximately \$4,000-\$5,500 in legal fees (to review organizational documents, research support for the application, and review form 1023). For estimated legal fees, you certainly cut those down by filling out the tax form on your own, but we would still recommend you have the application at least reviewed by an attorney. Also, your organizational documents may need some beefing up to support the application, so we built in a review of the articles and bylaws in our estimate. But we would really like to find a way to help you get this squared away, so maybe can talk to the firm about taking this on as a pro-bono project for you. Finally, the TTPO will need to be sure that it maintains proper corporate documents, holds annual meetings, files a tax return, and has a registered agent.

If the TTPO decided to organize under tribal law rather than state law, it could still apply for 501(c)(3) recognition or seek a ruling under **Section 7871** of the Tribal Governmental Tax Status Act, codified as section 7871 of the Internal Revenue Code. Section 7871 provides that political subdivisions of federally recognized tribes are treated like states for a number of tax benefits, including: charitable contributions are tax deductible; gifts and bequests are deductible; tax exempt bonding authority; exemption from certain excise taxes; treatment as a government under the private foundation excise tax rules. This can be a useful tool if the TTPO intends to solicit private donations. For example, the fish commission, CRITFC, mentioned above, formed a "Spirit of the Salmon Fund" and qualified as a Section 7871 entity so that all private donations to the fund are tax exempt.

We looked at **501(c)(6)** and it didn't look like it would totally fit. Section 501(c)(6) is an exemption for business leagues, chambers of commerce, real estate boards, boards of trade, and professional football leagues. I think the issue here would be whether the board was promoting a business interest. There are also some specific membership requirements for that exemption.

In conclusion, the TTPO corporate structure has some potential benefits if the group plans to expand and solicit donations more broadly. But it will want to be sure to gain federal tax exempt status as soon as possible so that any revenue to the corporation will not become taxable.

Please let us know if you have any questions.

-Aubrey